IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.3237 OF 2005

Dilip Balaso Khilare ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Ms.Nasreen Ayubi, adv. appointed for the Applicant.
Mr.Y.S.Shinde, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 10th April, 2007.

P.C.:

1. Heard Ms. Ayubi advocate appointed for the applicant, who has filed this application from the jail and Mr.Shinde, the learned APP for the State.

2. To state in brief, the present applicant is undergoing life imprisonment in Kolhapur Central Jail since 19-8-1993. On his request, he was granted furlough leave for two weeks by the order dated 8-6-2001 and he was actually released on 9-6-2001. After a period of furlough beginning from 9-6-2001 to 22-6-2001, he was expected to surrender himself at the Kolhapur Central jail on 23-6-2001. However, on expiry of the furlough leave, he did not surrender. On 10-8-2001 he was found in Sangli and a police head constable from local crime branch arrested him and produced before the jail authorities on the same day. As he had overstayed

for a period of 48 days, he was given notice to show cause as to why he should not be punished for the overstay. He submitted his explanation on 23-8-2001 stating that during the furlough period he had suffered from jaundice and he was required to take the long treatment and the Doctor had advised him complete rest. However, he could not inform the jail authorities about this. He also sought one month time to secure and produce medical certificate. He explained that he was in jail for a long period of 12 years and he had not committed any offence in jail. With this he requested to be dealt with leniency and he also requested that the security amount of Rs.5,000/- deposited by him at the time of release on furlough be refunded to him. After obtaining consent from the District and Sessions Judge, the Superintendent of jail rejected his prayer for leniency and directed to deduct 240 days from the remission already granted to him. The amount of Rs.5,000/- deposited by him was also directed to be forfeited . Being aggrieved by the same, the applicant has filed this application. Apparently the application appears to be under section 482 of the Cr.P.C.

3. Perused the record as well as the orders passed by the Sessions Court in respect of this matter. The order was passed by the Additional Sessions Judge

approving the proposal to cut 240 days remission at the rate of 5 days for each day of overstay on 4-3-2002. Order is cryptic. It only states " Read the proposal. Heard the prisoner in person. Explanation given by the prisoner is not satisfactory. The proposal submitted by the Superintendent, Kalamba Jail is approved." It shows that the learned Additional Sessions Judge has not given any reasons as to why the explanation given by the prisoner was not found satisfactory and why it was necessary to cut remission to the extent of 240 days. Similarly, request made by him for refund of Rs.5,000/-, being the surety amount, was turned down. The order passed by the Sessions Judge, Kolhapur on 9-7-2003 only reveals that because the prisoner did not turn up after leave was over, he had committed breach of prisoners furlough rules and therefore, forfeited amount can not returned back to him. Here also the learned Sessions Judge did not give any reasons as to why the explanation given by the accused was not acceptable or satisfactory.

4. As per the report from the jail, till 31st October, 2006, the applicant was in jail as undertrial prisoner for two years ten months and 21 days. Thereafter from the date of conviction he had actually undergone imprisonment for a period of 13 years 2 months and 12 days. Thus, he had been actually in jail for a

period of 16 years, one month and 3 days upto 31st October, 2006. He had earned remission of 5 years and 7 days during the said period. Taking into consideration remission period, he had undergone sentence for 21 years, one month and 10 days till 31st October, 2006. The order passed by the Superintendent Central Prison does not reveal that prior to this incident, the applicant had violated any prison rules or conditions of furlough or parole. It appears that after having undergone actual sentence for about 16 years, this was first instance when he had overstayed for a period of 48 days for which he had given explanation. The fact remains that he had sought time to furnish medical certificate but possibly because he is in jail, he could not furnish it. Taking into consideration his earlier record, his explanation could not have been summarily rejected without giving any reason.

4. Rules made under Section 11(1) of the Prisons Act and notified on 2nd July, 1964 authorises superintendent of jail to award certain punishments for late surrender or overstay after furlough or breach of condition of parole. They are as follows:

> 2. In each case of late surrender from furlough or breach of any of the conditions of parole, the punishment mentioned below or specified in section 48-A of the Act may be awarded by the Superintendent at his discretion

> with due regard to the circumstances of the case and after obtaining the prisoner's explanation and the prior approval of the Inspector General or the Deputy Inspector General if required under clause 1. If the Superintendent is satisfied that the contravention was for good or sufficient reasons, he may excuse the prisoner.
>
> (a) A maximum cut of 5 days' remission for each day of overstay provided that, where the prisoner, has not sufficient remission to his credit he shall cease to earn remission for such period as the Superintendent may direct:
>
> (b) Stoppage of canteen concession for a period of not less than one month, but not more than three months.
>
> (c) Withholding concession of either interviews or letters or both for a period not exceeding three months.
>
> (d) In cases of furlough, the furlough period not to be counted for shortening the sentence.

The Clause (a) reveals that a maximum cut of 5 days remission for each day and overstay may be awarded. It does not mean that in every case, there should be an order for maximum cut off 5 days for each day of overstay. The word "Maximum" clearly indicates that discretion is given to the superintendent of awarding the punishment of cut in remission depending upon the facts and circumstances of each case. It appears that in present case if the complete record of the applicant for a period of about 16 years would be considered, there could be no justification to award maximum prescribed cut of remission at the rate of 5 days for

each day of overstay, even if his explanation was not satisfactory. As pointed out above, the applicant had given explanation that because of jaundice he was bed ridden and was required to take complete rest and due to this reason, he could not surrender on stipulated date. The authorities below have not given any reasons for rejection of his explanation. The authorities below have also not given any valid reason why maximum prescribed sentence of cut in remission was necessary in this case. It appears that orders in respect of the present applicant were passed by the authorities below without application of mind. Therefore, to secure the ends of justice, it will be necessary for this Court to invoke inherent powers and to set aside both the orders.

5. In view of the facts and circumstances and legal position discussed above, the impugned orders awarding cut off 240 days in remission as well as the order not to refund surety amount of Rs.5,000/- to the applicant are hereby set aside. Amount of Rs.5,000/- be refunded to him.

6. Application stands disposed off in terms of the above directions.

(J.H.Bhatia,J.)